



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

September 28, 2012

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

John R. Roberts, Esquire
County Attorney for Loudoun County
Office of the County Attorney
1 Harrison Street, S.E.
5th Floor, MSC#06
Leesburg, Virginia 20175-3102

Dear Mr. Roberts:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issue Presented

You inquire whether Loudoun County ("County") may apply proceeds of general obligation bonds issued by the County for one project, but no longer needed for that project, to a different project, when each project has been approved at referendum by the qualified voters of the County.

Response

It is my opinion that a county may not apply proceeds of general obligation bonds issued by the county for one project to a different project unless the resolution or ordinance adopted by the county and submitted to the qualified voters authorizes the application of the bond proceeds to the other project.

Background

You relate that the County has a Capital Improvement Program ("CIP") for a series of projects extending over a number of years. To fund that CIP, the County conducts a bond referendum each year to ask the voters to consider whether to approve the issuance of general obligation debt for specified projects. You also note that the County is very specific in its bond resolutions, typically reciting a specific amount to be authorized for each project listed in the referendum. In each fiscal year, the County projects the anticipated funding needed to construct approved projects and determines the amount of general obligation debt to be issued. In some instances, a project will be completed under budget, and the County may have issued more debt than needed for that project. You also indicate that the County can use the leftover funds to pay debt service on the bonds or use the funds to call or defease the bonds.

Applicable Law and Discussion

The Constitution of Virginia provides that:

[n]o debt shall be contracted by or on behalf of any county or district thereof or by or on behalf of any regional government or district thereof except by authority conferred by the General Assembly by general law. The General Assembly shall not authorize any such debt ... unless in the general law authorizing the same, provision be made for submission to the qualified voters of the county or district thereof or the region or district thereof, as the case may be, for approval or rejection by a majority vote of the qualified voters voting in an election on the question of contracting such debt. Such approval shall be a prerequisite to contracting such debt.^[1]

The authority of a county to contract debt is set forth in general law pursuant to the Public Finance Act of 1991 (“Public Finance Act”).² The Public Finance Act provides that “any locality may ... contract debts for any project, borrow money for any project and issue bonds to pay all or any part of the cost of acquiring, constructing, reconstructing, improving, extending, enlarging and equipping any project.”³ As the constitutional provision requires, however, this authority is limited in that, generally, “no county has the power to contract any debt or to issue its bonds unless a majority of the voters of the county voting on the question at an election held in accordance with §§ 15.2-2610 and 15.2-2611 approve contracting the debt, borrowing the money and issuing the bonds.”⁴

The Public Finance Act establishes the procedures a county must follow to contract debt and issue general obligation bonds. First, the county “shall adopt an ordinance or resolution setting forth in brief and general terms *the purpose or purposes for which the bonds are to be issued* and the maximum amount of the bonds to be issued.”⁵ When voter approval is required, the ordinance or resolution must also “request the circuit court to order an election to be held pursuant to §§ 15.2-2610 and 15.2-2611 on the question of contracting the debt and issuing the proposed bonds.”⁶ Once certified by the clerk of the governing body, a copy of such resolution or ordinance is to be filed with the circuit court serving the locality.⁷ Then, “[t]he circuit court shall order a special election . . . [to] take the sense of the voters of the locality on the question of contracting the debt and issuing bonds *for the purpose or purposes set forth in the resolution or ordinance.*”⁸ Finally, “[i]f a majority of the voters of the locality voting on the question approve the bond issue . . . [t]he locality may then proceed to prepare, issue and sell its bonds up to the amount so authorized”⁹

Once the bond has been approved, the governing body is bound by the terms of the ordinance or resolution it submitted to the voters. The Supreme Court of Virginia has declared that “[t]he issuance of bonds pursuant to an election [by the voters of the respective county] must be in conformity with the terms and conditions of the submission [to such voters,]”¹⁰ which, as noted above, is required to set forth

¹ VA. CONST. art. VII, § 10(b).

² VA. CODE ANN. §§ 15.2-2600 through 15.2-2663 (2012).

³ VA. CODE ANN. § 15.2-2604(2). *See* § 15.2-2602 (defining “cost” and “project” broadly).

⁴ Section § 15.2-2638(A) (2012). There are specific exceptions to the general requirement, but none of the exceptions are germane to the facts set forth underlying the question presented. *See* § 15.2-2638(B).

⁵ Section 15.2-2640 (2012) (emphasis added).

⁶ *Id.*

⁷ Section 15.2-2610.

⁸ *Id.* (emphasis added).

⁹ Section 15.2-2611.

¹⁰ *Miller v. Ayres*, 211 Va. 69, 78, 175 S.E.2d 253, 259 (1970).

*“the purpose or purposes for which the bonds are to be issued and the maximum amount of the bonds to be issued.”*¹¹ As this office consistently has opined, the proceeds of a bond issue may be used only for the purpose for which the bonds were issued¹² as expressed in the submission to voters.¹³ Although the question submitted to voters may be worded specifically or generally,¹⁴ a board of supervisors is bound by that language and, therefore, may not use bond proceeds for any use other than that expressly approved by the voters, as set forth in the bond referendum.¹⁵ Thus, if the resolution or ordinance approved by the voters sets forth a separate authorization amount for each project listed therein without language to permit the use of leftover bond funds authorized for one of the listed projects to be applied to another project listed in the resolution or ordinance, the governing body is bound by the language used and cannot reallocate those proceeds.

Conclusion

Accordingly, it is my opinion that a county may not apply proceeds of general obligation bonds issued by the county for one project to a different project unless the resolution or ordinance adopted by the county and submitted to the qualified voters authorizes the application of the bond proceeds to the other project.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General

¹¹ Section 15.2-2640 (emphasis added).

¹² See Ops. Va. Att’y Gen.: 1950-51 at 31; 1960-61 at 260; 1956-57 at 225; 1964-65 at 293.

¹³ See 1956-57 Op. Va. Att’y Gen. 225; 2001 Op. Va. Att’y Gen. 44, 45 n.3 and citations therein.

¹⁴ See 1960-61 Op. Va. Att’y Gen. 260, 263 (if question submitted to voters uses specific language, even if not required, school board’s use of bond proceeds is confined by the specific language used).

¹⁵ *Id.* See also 1970-71 Op. Va. Att’y Gen. 39, 40 (where bond referendum authorized \$7.5 million in bonds for construction of two high schools and two elementary schools, school board may use bond proceeds for three of the voter-approved school buildings, although funds are insufficient to construct all four schools authorized); 2001 Op. Va. Att’y Gen. at 44 (where bond record indicated that a different site could be a possibility, the locality was authorized to build approved library on an alternate site).